to pay $2,000, neither more nor less, and is unenforceable as such, the bond is not void, but remains a valid instrument which is regarded as security for the payment of damages. The interpolation of a third party to hold and pay penal deposits differs in no essential way from the exchange of penal bonds, for, although the third party is a stranger to the original contract, in both instances this latter agreement remains the substance of the transaction. It follows, therefore, notwithstanding the fact that the agreement in the principal case to pay over the penal sum was unenforceable as such, that the deposit remained a source of payment of possible damages.

DESCENT AND DISTRIBUTION — NATURE OF ESCHEAT — WHETHER SUBJECT TO INHERITANCE TAX. — Real and personal property of an intestate without heirs escheated under a statute to the county wherein it was situated. The state sued to collect an inheritance tax under a statute imposing a tax on the transfer of any property "by will or by the intestate laws of this state." *Held*, that the transfer by escheat is subject to the tax. *People* v. *Richardson*, 109 N. E. 1033 (Ill.).

Under a similar statute providing for escheat the Probate Court with statutory powers to distribute intestate estates, decreed that the property of an intestate without known heirs escheated to the defendant county. The plaintiff, claiming as heir, now sues the county to recover the land, alleging that as an escheat was not a form of inheritance, the Probate Court had no jurisdiction. *Held*, that escheat was part of the scheme of distribution, and the Probate court had jurisdiction. *Christianson* v. *County of King*, Sup. Ct. Off., No. 67.

Under the English common law escheat was an incident of feudal tenure. On the failure of heirs or of inheritable blood to the tenant, the tenure was determined, and the land reverted back to the lord, the original grantor. See CO. LITT. 13 *a*; 2 BL. COM. 72, 244; 4 KENT COM. 423. Escheat in its feudal sense still persists in England. See WILLIAMS, REAL PROPERTY, 55. That this feudal escheat should not be subject to an inheritance tax is shown by the analogy that the coming into possession of a vested remainder upon the death of a life tenant is not so taxable. *In re Pell's Estate*, 171 N. Y. 48, 63 N. E. 789. But in the United States escheat in the feudal sense seems not to exist. See 3 WASHBURN, REAL PROPERTY, 6 ed., 61. It is doubtful whether there has been any feudal tenure in this country since the Revolution. See 2 BL. COM., Cooley's ed., 102 n.; 4 KENT COM. 424; 1 WASHBURN, REAL PROPERTY, 5 ed., 39–42. See *contra*, GRAY, RULE AGAINST PERPETUITIES, § 22. In a number of states it has been expressly declared non-existent. See GRAY, RULE AGAINST PERPETUITIES, § 23. The state now succeeds to the estate of the deceased as *ultimus haeres*, by virtue of its sovereignty. See *Matthews* v. *Ward's Lessee*, 10 Gill & J. (Md.) 443, 451. See TIFFANY, REAL PROPERTY, § 458. Under the English common law escheat did not apply to personalty, nor to equitable interests in land; but in the United States it is now almost entirely regulated by statute, and includes the transfer to the state of property rights of every nature. Compare *Burgess* v. *Wheate*, 1 Eden 177, with *Johnston* v. *Spicer*, 107 N. Y. 185, 13 N. E. 753; *Matthews* v. *Ward's Lessee*, *supra*; *Commonwealth* v. *Blanton's Executors*, 2 B. Mon. (Ky.) 393. See STIMSON, AM. ST. LAW, §§ 1151, 1157. It is submitted that escheat in this country is properly included within "the intestate laws," and is therefore subject to the usual form of inheritance tax.

DIVORCE — DEFENSES — VOIDABILITY OF THE MARRIAGE. — The plaintiff brought an action for separation from her husband. The husband, in defense, pleaded facts that showed the marriage to be voidable at his election. *Held*, that this is not a good defense. *Ostro* v. *Ostro*, 155 N. Y. Supp. 681 (App. Div.).

It is axiomatic that a divorce proceeding must be predicated upon the exist-

ence of a valid marital status, for it is that which it proposes to dissolve or modify. *Mangue* v. *Mangue*, 1 Mass. 240; *Holtman* v. *Holtman*, 114 S. W. 1198 (Ky.). See 2 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, §§ 732, 736. The principal case presents a voidable marriage, which, as distinguished from a void marriage, does bring into existence a valid marital status which continues and is good for all purposes until avoided. *State* v. *Cone*, 86 Wis. 498, 57 N. W. 50; *Elliott* v. *Gurr*, 2 Phill. Ecc. 16. See 1 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, § 259; 2 NELSON, DIVORCE AND SEPARATION, § 569. It may be avoided only by judicial decree on motion of the proper party. N. Y. CONSOL. LAWS, 1909, ch. 19, § 7. Now if the defense offered in this case is in effect a cross bill for nullification, as it was in the English Ecclesiastical Courts, it might well be entertained, for nullification would necessarily render a divorce vain. See *Guest* v. *Shipley*, 2 Hag. Con. 321; *Anon.*, 1 Deane Ecc. Rep. 295. And see ROGERS, ECC. LAW, 2 ed., 361; 1 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, § 273. But it is not such a cross bill, for the husband does not seek to avoid the marriage, nor is it clear that he ever will do so. To allow the contingency of future nullification as a defense to a suit for divorce would plainly violate the spirit of all the divorce laws. One spouse would be left entirely unprotected in a relationship in which the other is fully protected and in which he might see fit to continue indefinitely. *Smith* v. *Cook*, 24 Que. S. C. 469; *Taylor* v. *Taylor*, 173 N. Y. 266, 65 N. E. 1098. See *Gould* v. *Gould*, 125 App. Div. 375, 109 N. Y. Supp. 910; *Von Prochazka* v. *Von Prochazka*, 21 N. Y. 309, 3 N. Y. Supp. 301. But see *Durham* v. *Durham*, 99 App. Div. 450, 452, 91 N. Y. Supp. 295, 297.

EQUITY — FORECLOSURE OF A MORTGAGE ON PROPERTY PARTLY IN A FOREIGN JURISDICTION — INDIRECT ORDER. — A corporation formed to irrigate California land found it necessary to build a canal through Mexican territory. By the law of Mexico a foreign corporation could not hold land there, so a subsidiary Mexican corporation was formed to hold the title. A large judgment was obtained against the California corporation for damages from failure to control the water. (*The Salton Sea Cases*, 172 Fed. 792). In pursuance of a plan to defeat the collection of this judgment and the foreclosure by bondholders of their deed of trust, by dividing the property so as to make each part valueless by itself, a creditor, who also owned the controlling interest in the California corporation, obtained a collusive judgment in Mexico against the Mexican corporation, sold the Mexican property on execution to its creature, a second Mexican corporation, and had a receiver put in charge of the property. The bondholders now bring a bill in equity to foreclose their deed of trust, and the judgment creditors intervene. *Held*, that the collusive creditor be enjoined from making use of the Mexican judgment or interfering with the property in Mexico, and that the property in California and the stock of the two Mexican corporations be sold as a whole. *Title Insurance and Trust Co.* v. *California Development Co.*, 152 Pac. 542 (Cal.).

Equity, by its power over the defendant personally, will enjoin the prosecution of foreign suits and judgments in order to prevent fraud and collusion. *Wonderly* v. *Lafayette County*, 150 Mo. 635, 51 S. W. 745; *Cole* v. *Cunningham*, 133 U. S. 107. And this is true though the subject matter lies in a foreign jurisdiction. *Bunbury* v. *Bunbury*, 8 L. J. Ch. 297. But in the principal case equity had no power over the Mexican land and so the transfer thereof could not be declared void. *Carpenter* v. *Strange*, 141 U. S. 87; *State* v. *Grimm*, 243 Mo. 667, 148 S. W. 868. But in the ordinary case a reconveyance could have been ordered. *Gardner* v. *Ogden*, 22 N. Y. 327. And had the entire system been situated in States of the Union, the whole could have been subjected to foreclosure by a decree of one of those States. *Muller* v. *Dows*, 94 U. S. 444; *Meade* v. *New York, etc. R. Co.*, 45 Conn. 199; *Union Trust Co.* v. *Olmstead*,